

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CONNECTU LLC,
Plaintiffs,

v.

MARK ZUCKERBERG, EDUARDO SAVERIN,
DUSTIN MOSKOVITZ, ANDREW MCCOLLUM,
CHRISTOPHER HUGHES, and THEFACEBOOK,
INC.,

Defendants.

MARK ZUCKERBERG, and THEFACEBOOK,
INC.,

Counterclaimants,

v.

CONNECTU LLC,
Counterdefendant,
and
CAMERON WINKLEVOSS, TYLER
WINKLEVOSS, and DIVYA NARENDRA,
Additional Counterdefendants.

CIVIL ACTION NO. 1:04-CV-11923
(DPW)

FACEBOOK DEFENDANTS' MOTION TO DISMISS

I. MOTION TO COMPEL

For the reasons set forth in the accompanying Memorandum, Defendants Mark Zuckerberg, Dustin Moskovitz, Andrew McCollum, Christopher Hughes, and TheFacebook, Inc. (“The Facebook Defendants”)¹ hereby move to dismiss this case under Rule 12(b)(1), or, in the alternative, to dismiss Plaintiff’s non-copyright claims under Rule 17(a).

Specifically, the Facebook Defendants seeks dismissal on the ground that Plaintiff ConnectU LLC (“ConnectU”) has no standing to assert any of its claims in this action, and therefore, the Court lacks jurisdiction over them. Alternatively, the Facebook Defendants move the Court to dismiss ConnectU’s non-copyright claims because ConnectU is not the real party in interest for such claims, and allowance to cure this defect would be improper.

II. REQUEST FOR ORAL ARGUMENT

Due to their belief that oral argument may assist the Court, and their wish to be heard on the issues presented in this Motion and the accompanying Memorandum, the Facebook Defendants hereby request oral argument pursuant to Local Rule 7.1(d).

III. PROPOSED ORDER

Two proposed Orders are submitted with this Motion, one for each alternative.

IV. CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2).

Counsel for the Facebook Defendants certifies that pursuant to Local Rule 7.1(a)(2) they met and conferred with counsel for ConnectU and Defendant Eduardo Saverin regarding this motion. On October 12, 2005, Robert D. Nagel and Joshua H. Walker (on behalf of the Facebook Defendants) held a teleconference with Troy E. Grabow and John F. Hornick (on behalf of ConnectU) to discuss the issues addressed in this Motion and the accompanying Memorandum. During this teleconference, ConnectU stated that, while it did not agree with the

Facebook Defendants' position (except that diversity jurisdiction did not exist), it would offer to add as a plaintiff any person which the Facebook Defendants determined was a real party.

However, ConnectU refused to consider dismissing the action or any of its claims.

The Facebook Defendants responded that it would consider the offer, but stated that such addition of parties at this late date would cure neither subject matter jurisdiction nor real party defects, nor would it cure the prejudice to defendants caused by Plaintiff's decision to bring this action while knowing it was not the real party in interest. Following review, the Facebook Defendants determined that the offer was inadequate for the above reasons and, in part, due to the fact that it facially required defendants to resolve Plaintiff's inconsistent positions as to the identity and existence (or non-existence) of Harvard Connection. For this reason, the parties were unable to reach agreement.

Separately, Joshua H. Walker held a teleconference with Robert B. Hawk (on behalf of Eduardo Saverin), also on October 12, 2005. Defendant Saverin agreed that the Motion was warranted.

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¹ Defendant Eduardo Saverin is represented by separate counsel in this matter.

Dated: October 14, 2005.

Respectfully submitted,

/s/ Monte M.F. Cooper /s/

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* Admitted *Pro Hac Vice*